

RIGHT TO INFORMATION: A KEY TO THE SUCCESS OF DEMOCRACY

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ABSTRACT

No democratic Government can survive without accountability and the basic postulate of accountability is that people should have information about the functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy... A citizen's right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic state. Right to Information has been recognized by the Supreme Court as a part of the fundamental right under Art 19(1) (a) of the Constitution through a series of decisions as the Judiciary was aware, that in true democracy fundamental rights would be of no meaning without 'right to know' and 'right to access information'. The importance of RTI for good governance, democracy and the overall development of the people is discussed here.

Key-words: Democracy, Good Governance, Corruption, Right to Information, Accountable.

“One-sided information, disinformation, misinformation and non-information will equally create an uninformed citizenry which makes democracy a farce...”¹

Government which reveals in secrecy...not only acts against democratic decency but busies itself with its own burial.² India has a representative democracy. It is 'We the People' who through their elected representatives governed the country. In a democracy the responsibility of the citizen is not only to give vote but also to check the working of their elected representatives. The mere fact that a government is elected does not make it a democratic; it is participation of the people in the governance that makes a true democracy. Democracy can not survive without free and fairly informed voters. Democracy demands that government should be constantly evaluated and accountable to the people. As uninformed citizens can not exercise their entitlements and obligations as citizens and the democracy would be of no meaning without ensuring corruption free governance.

¹ *Union of India v. Association for Democratic Reforms*, JT 2002 (4) SC 501.

² *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

The Preamble of the Indian Constitution ensures to all its citizens liberty of thought, expression... and freedom of speech and expression is guaranteed as fundamental right under Article 19(1) (a) of Indian Constitution for 'We the people.' 'It occupies a preferred position in the hierarchy of liberties giving ... protection to all other liberties'.³ Our founding fathers were aware that political rights would be meaningless unless certain socio-economic rights or developmental issues like food security, shelter, education, health, sanitation, employment, medical care etc. will not be ensured for their upliftment. Accordingly, the Directive Principles of State Policy were enshrined in Part IV of the Constitution giving, a welfare status to the State. Article 39(a) (b) (c) provides for adequate means of livelihood, equitable distribution of material resources of the community, check on concentration of wealth and means of production. In a welfare state bureaucratic powers increased, so it is necessary to keep check on these powers to see whether the purpose for which they are granted are being exercised or not. All the fundamental rights and principles enshrined in Directive Principles of State Policy (DPSP) will have no meaning without well informed citizens. The citizens should be able to know about the policies and projects made for their welfare by the persons in power. It is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matter is absolutely essential.⁴ In India there was no specific provision guaranteeing for freedom of right to information. However, the access to information in post-independence period was governed by 'Official Secret Act, 1923'.

Official Secrets Act, 1923 v. RTI

Official Secrets Act, 1923 is a replica of British Official Secrets Act, 1911. Although, in Britain this legislation has been substantially reformed but the Indian version retained its original form apart from some minor amendments till 2006. It is to be noted that British government which enacted Official Secret Act in India during pre-independence period was reluctant to make information easily accessible to Indians as their purpose was not the welfare of the people but to rule and make profit for their country. Official Secrets Act, 1923 on many occasions, during post-independence period has wounded freedom of speech and expression and also restricted freedom of press. It laid down all disclosures and use of official information a criminal offence unless expressly authorised. The truth is that bureaucrats were having the weapon of 'Official Secrets Act', while judiciary-the privilege of 'contempt of court' and legislatures of 'parliamentary privileges'. The privilege of the Government to withhold documents from the courts is claimed on the basis of Section 123 of the Indian Evidence Act, 1872, which provides that no one shall be permitted to give evidence from unpublished official records relating to the affairs of the state except with the permission of the head of the department concerned, who shall give or withhold such permission as he thinks fit. Section 124 extends this privilege to confidential official communication also, which adversely affect the openness even in the interest of justice and fair play. Consequently, it was impossible even for the press to go into the depth of any matter properly under these constraints. It is for 58 years after independence that in India-the biggest

3. Jain MP *Indian Constitutional Law*, (5Edn.) Wadhwa Nagpur p. 986

4. *Ibid*.

democracy of the world, secrecy remains as a rule and disclosure of information as an exception till 'Right to Information Act, 2005' come into existence. However, country like Sweden has its right to information counterpart enacted over two centuries ago (in the year 1776).

Right to Know in a Democratic Setup: Strengthened by the Judiciary

Over a half century ago, Judiciary started doing the creative and liberal interpretation of fundamental rights in perspective of welfare of people and development of the country. As the Judiciary was aware, that in true democracy fundamental rights would be of no meaning without 'right to know' and 'right to access information'. Right to know has been recognized by the Supreme Court as a part of the fundamental right guaranteed to the citizen under Art 19(1) (a) of the Constitution.

The Judicial verdict towards securing freedom of information perhaps began with the case of *Romesh Thapper v. State of Madras*⁵ where Patanjali Sastri C J observed: "Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education so essential for the proper functioning of the process of popular Government, is possible.... The public interest in freedom of discussion (of which the freedom of press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves... all members of society should be able to form their own beliefs and communicate them freely to other."

Freedom of press is also very significant in achieving the free, fair and real democracy. "The main object of providing guaranteed freedom of press is for creating a fourth institution behind the control of state authorities as an additional check on the three official branches: the executive, the legislative and the Judiciary."⁶ Unlike the American Constitution, Article 19(1) (a) of Indian Constitution does not expressly mention the liberty of the press. Perhaps our Constitution framers were reluctant to include it in the Constitution separately as a fundamental right. This aspect was explained by Dr. B. R. Ambedkar, main architect of the Indian Constitution. His words are:

"The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The Editor of a press or the manager is merely exercising the right of the expression, and, therefore, no special mention is necessary of the freedom of the press."

It is now a settled law without any confusion that the right to freedom of speech and expression in Article 19(1) (a) includes the liberty of the press. In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Evaluation of the public authorities and the governance is impossible without factual, updated and primary information. In this prospect, keeping in view the importance of freedom of the press in democratic society, Venkataramiah, J. in *Indian Express Newspapers (Bombay) P. (Ltd.) v. Union of India*⁷ stated:

"In today's free world, freedom of press is the heart of social and political intercourse. The press has now assumed the role of public educator making formal and non formal education possible

5. 1950 SCR 594

6. *New York Times v. Sullivan*, 376 US 255 (known as Pentagon Papers case)

7. (1985) 1 SCC 641.

in a large scale particularly in the developing world. ... The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate can not make responsible judgments.”

Supreme Court in the case of *Association for democratic reforms v. Union of India*⁸ duly affirmed the *Keshavanand Bharti*⁹ case 1973 and *P.V. Narasimha Rao*¹⁰ 1998 that “Fundamental right to receive information which springs forth from the right to freedom of speech and expression is also a part of the basic structure of the constitution.” The press in no way enjoys any special privilege which can be said to be distinct from the freedom of the citizen.¹¹ In a formal sense the fact that the freedom of press has not been specifically mentioned in the Constitution has not made a difference.¹²

In *State of U.P. v. Raj Narain*¹³ Mathew J. on behalf of the Bench declared: “The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. He further observed that the concept of right to know which is derived from the concept of freedom of speech is not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussions on public security. To cover with veil of secrecy the common routine business is not in the interest of public It is generally desired for the purpose of parties and politics or personal self interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”

It was in *S. P. Gupta case*¹⁴ Supreme Court recognized the ‘Right to Know’ as *sine qua non* of fundamental freedom of speech and expression and raised it to the status of fundamental right. The Supreme Court observed:

“No democratic Government can survive without accountability and the basic postulate of accountability is that people should have information about the functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy... A citizen’s right to know the facts, the true facts, about the administration of the count thus one of the pillars of a democratic state.” According to Justice Bhagwati, the disclosure of information regarding the functioning of the government must be the rule and secrecy an exception and that too when public interest strictly so demands.¹⁵ The concept of people’s right to know which was found essential to democracy was again strengthened by the Supreme Court in a number of cases¹⁶.

For the first time in *Union of India v. Association for Democratic Reforms*¹⁷ the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a)

8. (2002) 5 SCC 294 .

9. *Keshavanand Bharti v. State of Kerala* (1973) 4 SCC 225.

10. *P.V. Narasimha Rao v. state* (1998) 8 SCC.

11. *Romesh Thapper v State of Madras* (1950) SCR 594.

12. Dhavan R., “*The Press the Constitutional Guarantee of Free Speech and Free Expression.*” 28 JILI 1986) p308.

13. (1975) 4 SCC428.

14. AIR 1982 SC 149.

15. Ibid.

16. *Khatri v. state of Bihar* AIR 1981 SC 1068; *Prabhu Dutt v. Union of India* AIR 1982 SC 6; *Secretary, Ministry of IB v. Cricket Association of Bengal* (1995)2SCC161; *LIC v. Manubhai D, Shah* AIR 1993 SC 171 ; *Dinesh Trivedi, M.P. and Others v. Union of India* (1997) 4SCC306;

17.(2002) 5 SCC 294.

by the need to improve and refine the political process of election. The Supreme Court upheld the freedom of right of the voter under Article 19(1)(a) of the Constitution to know antecedents including criminal past of his candidates contesting election and in particular to bring transparency in the process of election. Legislatures go to polls periodically but it is true: "Democracy can't survive without free and fair elections and without free and fairly informed voters. Votes cast by uninformed voters in favor of any candidate would be meaningless. Therefore casting of vote by misinformed, non-informed voter or a voter having one-sided information only is bound to affect democracy seriously". It is one of the most remarkable decisions of Supreme Court to erase the evil of corruption wedded in the mechanism of elections. The court said "—Since the future of the country depends upon the power of the ballot, the voters must be given an opportunity for making an informed decision."¹⁸

In *R. P. Ltd v. Indian Express News paper*¹⁹ the court observed that people at large have a right to know in order to be able to take part in participatory development in the industrial life and democracy. Right to know is basic for citizens of a free country in the broad horizon of the right to life under Article 21 of the Constitution. That right has reached new dimensions and puts grater responsibility upon those who take upon the responsibility to inform. In *Vineet Narain v. Union of India*²⁰ the Supreme Court has recognized the 'right to corruption free governance' for the citizen in a democracy.

As fundamental right are accessible to the citizens through writs under Article 32 and 226. It was the case of *S.P. Gupta v. Union of India*²¹ that Judiciary changed its old individualistic jurisprudential concept of *Locus Standi* and the rule of Public Interest Litigation flourished in India to secure socio-economic justice and easy access to justice be available to all as a matter of right. Indian Judiciary even *suo motu* take cognizance of the wrongs that come to its notice through press or other media reports, or letters. Recently in a case like *Jessica Lal, Delhi High Court* took *suo motu* cognizance. Several scam and scandals like Hawala, Fodder, St. Kits Scam, illegal allotment of government houses and petrol pumps, Fertilizers scam has been unearthed by Indian Judiciary. Hence it has created an environment of transparency and engendered a sense of accountability in public functionaries.²² Whatever goes on in courts, of course, recorded and available to the public then why should not the bureaucrats developed themselves as an accountable institution in democracy.

Right to Information : Expectations and Constraint

Right to Information Act, 2005 is a welcoming step after 58 years of independence. It is one of the most significant legislation. It will serve as a bridge between government information and common people regarding the functioning of the government. It would also perform its vital role as watchdog of democracy. It will narrow the range of opportunities for miss-management and diversion of public funds by administrative authorities and also the bad governance. Whether the information would be easily accessible to the people under Right to Information Act, 2005 through the bureaucrats who are generally reluctant to give the information? Whether the government should not have a

18. Ibid.

19. AIR 1989SC 203.

20. AIR 1996 SC 3386.

21. AIR 1982 SC 149

22. Justice A.K.Sikri Human Rights and Indian Judiciary Nyaya Deep : Official Journal NALSA , Vol. VII, 82 (2006)

positive duty to give certain type of information which is for the upliftment and development of the citizen of India without waiting to be asked for them?²³ It is not easy to breakdown the entrenched clutches of secrecy as after independence openness has not been a priority for the Indian Government. 13, June 2006 BBC reported a farmer in Chattisgarh who had asked for information on paddy purchase in his areas was given a bill of Rs. 1,82,000/- for cost that were allegedly incurred for photocopying the official documents relating to the purchase. The documents filled an entire room²⁴ whereas the provision of section 7 of Right to Information Act prescribed that fee shall be reasonable and no fee shall be charged from persons living below poverty line. These practices would defeat the purpose of Right to Information Act in development of the democratic state. The cost of photocopying an official document is charged at Rs 2/- per page which is not reasonable amount. Photocopying machines are already installed in government departments and can be used at nominal cost. Even if the photocopying is done at a commercial establishments, the cost vary from 50 -75 paise per page at the most²⁵.

Good Governance and Right to Information

Even after *six* decades of independence, the promise of equality, liberty and to live with dignity to the 'We the People' has remained only on papers. India is suffering from under nutrition, illiteracy, hunger, starvation etc. According to 2001 census of India, its population is crossing a billion plus figure; 1.2 million people are living below poverty line and in starving condition. One million people are illiterate²⁶. Several enactments for their welfare are coming into existence. Even government is also making several policies, schemes and developmental projects for their upliftment viz. Indira Awas Yojna, which provides home to the underprivileged; Antyodaya Ann Yojana (2000), goal of providing food grains at highly subsidized rates; Mid-Day Meal Scheme, provide food in school; Balwadis, day care centers; Anganwadis, provide supplementary nutrition, immunization, health checkup etc.²⁷ Annapurna Scheme (AS), Balwadi Nutrition Programme (BNP) seeks to satisfy similar objects. There is no scarcity of funds with the state. Billions and billions money is expending on welfare schemes but still results are not satisfactory. The benefits of the schemes are not reaching to the targeted sections of the society. Right to Information Act will have a direct impact on some important developmental issues related to the country like how the state distributes social benefits or allocated funds for health, education etc. on the basis of priority. Services such as access to information will have a definite impact on the person's lives and country's development. Through the right to information masses, media, NGO can access whether government policies and projects regarding development of the country are within the right framework. They can also access the documents

23. As an indication of this tendency, recently the Supreme Court voluntarily published its data and statistics in the form of an annual report on pending cases and those disposed of by it till 2003 '*Right to information-II mark of Democracy* Milind Deora. Aug 16, 2005 23 (13 June 2006 India Together) <http://www.intentblog.com/author.php?author=Milind%20Deora>

24. Suman Sahani and Swati Gola '*RTI law turn on its Head*' in '*India Together*', Thu 15 Feb 2007 <http://www.indiatogether.org/>

25. *Ibid.*

26. *The Hindu Sep.*, 2005 (<http://www.hinduonnet.com/2005/09/09/stories/200509090151500.htm>)

27. <http://wed.nic.in/childdet.htm>, <http://indianngos.com/iccwdelhi>.

regarding proper implementation of the schemes and utilization of funds. In this process the role of media and NGO seems to be very important.²⁸

It is the primary function of the press to provide comprehensive and objective information on all aspects of the country's socio-economic and political life to strengthen the democratic feature of India. Print and electronic media can serve the powerful antidote to any arbitrary use of power and economic corruption by using 'right to information' as a strong tool for extracting the information especially in the country like India where 65% of the population is illiterate and tendency of watching the TV is on increase. It is necessary to make people aware about their 'right to information' to make democracy more meaningful and our government more accountable and more transparent. Ordinary people are now taking the 'right to information' route to get basic amenities, install road signage, and repair roads and even to get admission in the schools. There are many who through the help of NGOs like SNS have got their passports, pensions ration cards and IT refunds through Right to Information Act.²⁹

Greater transparency and accountability are must in a democracy to ensure 'corruption free governance'. In democracy, legislature, executive and judiciary, responsible for policy-making, policy-implementation and policy-adjudication respectively when infected with corruption destroy the country's development. As corruption is antithesis of development and also affected badly the developmental rights.

Recognizing the Right to Information is easy but implementing it as an effective access to information is difficult. Government should be developed as leading towards good governance, democracy and public centered development. As the 'Bad governance' is being increasingly regarded as one of the root causes of all evil within our societies. Good Governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law——. Good governance is an ideal which is difficult to achieve in its totality however to ensure sustainable human development, action must be taken to work towards this ideal. The RTI is one of the method by which success may be achieved in good governance³⁰. Access to Government records and information is an essential requirement for any modern government, especially in democracy, and such access facilitates public knowledge and discussion. Such access is also an important guard against abuse of power, corruption and mismanagement that is bred by secrecy and thus essential for accountability and good governance. It is beneficial to the government themselves as openness and transparency in decision making process assist in developing citizen's trust in government action and maintaining civil and democratic societies.³¹

28. The workers of right to information evaluated the documents containing more than 4000 pages carefully and exposed a frightening truth. How the government bent before the World Bank to fulfill the interest of multinational companies. Government was forced to withdraw its decisions of privatizing the Delhi Jal Board. *Is Media Playing its Role*: Vishnu Rajgadia, Prabhat Khaqbar, Dhanbad and Deoghar Edition, Convener, Jharkhand RTI Forum

29. Sunday Times of India. New Delhi Jan. 14, 2007 Page 9

30. Justice Y. K. Sabhawal, C J of India, *RTI and Good governance Nyaya Deep*, Vol. VII (4) Oct. 2006

31. K. Praksh and Rai K.B. *The Right to Know: A Hands-on Guide to the Right to Information Act*; Vikas Publishing House Pvt. Ltd.

Those who are ruled are thus not entirely at the mercy of those who rule. "Grants of powers to the rulers are at the same time charters of accountability for the ruled."³² To strengthen the democracy and for the development of the country the government should not think that people must be informed only that much which it thinks to be good for the people and safe for itself. RTI will be a good means for good governance, democracy and for the overall development of the people. Openness and accountability will remove the corruption; improve the administrative functioning and the quality and delivery of governance.

32.C.B. MacPherson: *The Real World of Democracy* (1972).